

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

97063

IN THE MATTER OF:)	
Motorola 52 nd St.)	
Superfund Site)	DOCKET NO. 2000-06
)	
UNDER THE AUTHORITY OF THE)	AGREEMENT AND COVENANT
COMPREHENSIVE ENVIRONMENTAL)	NOT TO SUE
RESPONSE, COMPENSATION, AND)	CITY OF PHOENIX
LIABILITY ACT OF 1980,)	
42 U.S.C. § 9601, <u>et seq.</u> ,)	
as amended.)	

I. INTRODUCTION

1. This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and the City of Phoenix ("Settling Respondent"). The United States and Settling Respondent are collectively referred to herein as the "Parties".

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. The Settling Respondent is a municipal corporation of the State of Arizona with responsibility for operation and management of the Phoenix Sky Harbor International Airport ("Sky Harbor"). The principal offices for Sky Harbor are currently located at 3400 Sky Harbor Boulevard, Phoenix, AZ 85034. Sky Harbor is located adjacent to the southern boundary of the Motorola 52nd Street Superfund Site in Phoenix, AZ and is not currently part of the Site. Settling Respondent plans to acquire a total of 400 acres of property as part of an expansion plan for Sky Harbor. Settling Respondent plans to acquire this property in phases and use this property for aviation-related uses, including, but not limited to, airfields, terminals, parking operations, air cargo operations, car rental operations, airport administrative functions and aircraft maintenance operations. This Agreement covers approximately 22.1 acres of land.

4. This Agreement applies only to the six (6) parcels of property identified in 4a - 4f below (some of which include sub-

parcels as indicated by their legal descriptions.) Settling Respondent has entered or will enter into a conditional purchase agreement with the owners of five of these six parcels for the City of Phoenix, as buyer, to purchase these properties. The City of Phoenix will acquire the remaining one parcel by condemnation. These six parcels may be collectively referred to herein as "Properties." Each parcel is located within the area encompassed by Operable Unit Two of the Motorola 52nd Street Superfund Site and are more specifically described in Exhibits 1 - 6.

(a) I.C.P. 400, LLC, Thomas E. Donahue, and Jacqueline M. Donahue, sellers, located at 149 S. 27th Street, Phoenix, AZ, as described in Exhibit 1 of this Agreement, consisting of approximately 7.3 acres of property, including a 78,963 square foot building. This property consists of a two-story office/warehouse building occupied by an on-demand delivery company. This property is leased by Velocity Express, formerly Corporate Express Delivery Systems Intermountain, Inc., and is used for an office, temporary storage, staging, and delivery of dry goods and documents.

(b) I.C.P. 400, LLC, Thomas E. Donahue and Jacqueline M. Donahue, sellers, located at 202 S. 27th Street, Phoenix, AZ, as described in Exhibit 2 of this Agreement, consisting of approximately 4.7 acres of property, including a 94,503 square foot building. This property is leased by Honeywell and is used as a warehouse and manufacturing building for the rebuilding, cleaning, and reconditioning of turbine engines.

(c) I.C.P. 400, LLC, Thomas E. Donahue and Jacqueline M. Donahue, sellers, located at 2739 E. Washington, Phoenix, AZ as described in Exhibit 3 of this Agreement, consisting of a three acre site, including a two-story 81,875 square foot building. This parcel is leased to the Arizona Department of Transportation for offices and public parking.

(d) Laundry & Cleaners Supply, Inc., seller, located at 4120 E. Madison Street, Phoenix, AZ, as described in Exhibit 4 of this Agreement, consisting of approximately 13,000 square feet of property (1/3 acre), including a 9,000 square foot facility. This property is leased by Avant Industries and is used to mix and package waterbed cleaning and conditioning products.

(e) Reliance Steel & Aluminum Co., seller, located at 301 S. 26th Street, 2532, 2538 and 2540 E. Jackson Street, Phoenix, AZ, as described in Exhibit 5 of this Agreement, consisting of a 106,784 square foot industrial complex situated

on approximately 5.5 acres. This property consists of 4 parcels. Three of the four parcels are contiguous. This property consists of the main complex which includes a general office/tool and supply warehouse, a metals manufacturing warehouse and a storage warehouse, totaling 5.1 acres. The property has access to a rail spur and also includes loading dock facilities for trucks. In addition, there is a storage yard located northwest of the main complex. This storage yard is located along 2532, 2538 and 2540 E. Jackson Street.

(f) 28th Street & Washington Limited Partnership, formerly Victoria Properties Management, LLC, seller, located at 215 S. 28th Street, Phoenix, AZ, as described in Exhibit 6 of this Agreement, consisting of approximately 1.1 acres of property, including a 20,266 square foot building. This property was leased by Contec, LLC and is vacant with improvements. Prior to vacancy, the property was used to service and repair cable television converter units.

5. The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination at the Properties which would otherwise result from Settling Respondent becoming the owner of the Properties.

6. The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

7. The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

8. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

9. "Existing Contamination" shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Properties as of the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Properties prior to the effective date of this Agreement; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Properties after the effective date of this Agreement.

10. "Institutional Controls" shall mean the covenants, easements, restrictions, conditions, and other equivalent requirements and controls authorized by EPA with respect to Existing Contamination for one or more of the following purposes: (1) to restrict the use of groundwater; (2) to limit human or animal exposure to Existing Contamination; (3) to ensure that there is no interference with the performance, operation, and maintenance of any selected response action; and (4) to ensure the integrity and effectiveness of any selected response action.

11. "Parties" shall mean the United States on behalf of EPA and the Settling Respondent.

12. "Property or Properties", depending on the context, shall mean that portion of the Site, encompassing approximately 22.1 non-contiguous acres, which is described in Exhibits 1-6 of this Agreement, or an individual parcel that is listed in paragraph 4 of this Agreement.

13. "Settling Respondent" shall mean the City of Phoenix.

14. "Site" shall mean the Motorola 52nd Street Superfund Site in Phoenix, Arizona. The Site shall include the Properties, and all areas to which hazardous substances and/or pollutants or contaminants that may have been released from the Properties have come to be located.

15. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

16. The Settling Respondent is a municipal corporation of

the State of Arizona and the sponsor of Sky Harbor, which is subject to federal laws and grant assurances that pertain to the use of the Properties and Sky Harbor. The Settling Respondent is the buyer in the six Contingent Purchase Agreements for the Properties located within the Site. The Contingent Purchase Agreements for the Properties are at different stages of completion, and the Properties are to be used for public purposes; therefore, EPA is willing to grant an extended period of time, up to eighteen (18) months, for the acquisition of the Properties by Settling Respondent in order that the Properties may be subject to this Agreement.

17. The Properties are six (6) non-continuous parcels located within the Site in an area currently consisting of commercial, industrial and residential uses.

18. The Settling Respondent has informed EPA that the Properties are to be acquired for the purpose of expanding Sky Harbor. The Properties will be used for aviation-related purposes, including but not limited to airfields, terminals, parking operations, air cargo operations, car rental operations, airport administrative functions and aircraft maintenance operations.

19. The Settling Respondent is a potentially responsible party at the Site due to its ownership of a portion of the Site. Settling Respondent has resolved its liability for EPA costs incurred at the Site and for a portion of EPA costs to be incurred at the Site in a Consent Decree entered in the United States District Court for the District of Arizona on November 29, 2000. The Parties acknowledge and agree that this Agreement and the Covenant Not to Sue in Section VIII hereof have no effect on Settling Respondent's status as a potentially responsible party due to its ownership of a portion of the Site (described in paragraph 27(b)).

20. The Settling Respondent represents, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondent's involvement with the Properties has been limited to inspecting, auditing and performing environmental audits and other due diligence of the Properties in connection with Settling Respondent's intended purchase of the Properties.

IV. PAYMENT

21. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondent agrees to pay to EPA the sum of One Hundred Thousand

dollars (\$100,000), within thirty (30) days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region 9, EPA Docket number 2000-06 and EPA Site Number 09BE, DOJ case number 90-11-3-06000/1 and name and address of Settling Respondent. Payment shall be sent to:

U.S. EPA
Region IX, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Notice of payment (including a copy of the check and transmittal letter) shall be sent to those persons listed in Section XV (Notices and Submissions), and to:

Catherine Shen
Financial Management Specialist (PMD-6)
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 94105

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Attn: DJ # 90-11-3-06000/1

22. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

23(a). Commencing upon the date that it acquires title to any or all of the Properties, Settling Respondent agrees to provide to EPA and its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Properties and to any other property to which access is reasonably required under CERCLA and RCRA for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Properties and/or the Site under federal

law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of any response actions to be undertaken at the Properties. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et. seq., and any other applicable statute or regulation, including any amendments thereto.

23(b). The Parties acknowledge that the Settling Respondent is purchasing the Properties for future aviation-related uses and that FAA approval is required for construction and many other activities at the airport. Federal statutes, regulations and other authorities that will be applicable to the use and management of the Properties include, but are not limited to, 49 U.S.C.A. Sections 47107(a), 47101(g) and 40113; 14 C.F.R. Part 107 "Airport Security"; 14 C.F.R. Part 139, "Airport Certification" including the Airport Certification Manual promulgated under 14 C.F.R. Subpart C; 14 C.F.R. Part 77, "Objects Affecting Navigable Airspace"; FAA Order 5100.38(A) Grants Manual, including Part V, Grant Assurances; and FAA Order 5190.6(A), Airport Operations Manual.

24. As to each of the six Properties, within 15 days after Settling Respondent's acquisition of fee title to the Property, Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Maricopa County, State of Arizona, which shall provide notice to all successors-in-title that the Properties (as identified in the relevant Exhibit 1-6) are part of the Site, that EPA selected an interim groundwater remedy for the Site in July, 1994, and that the potentially responsible parties are subject to a U.S. EPA Administrative Order for Remedial Action Docket No. 98-15, requiring construction and two years of operation & maintenance of the OU2 remedy. Such notices shall identify the name and docket number of the case, and the date the Administrative Order was signed by EPA. The Settling Respondent shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Respondent shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

25. The Settling Respondent, to the extent that it has legal authority to do so, shall ensure that assignees, successors in interest, lessees, and sublessees of each of the Properties shall provide the same access and cooperation, including any Institutional Controls required for the individual Properties.

The Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on each of the Properties as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of any of the Properties or an interest in any of the Properties are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

VI. DUE CARE/COOPERATION

26. The Settling Respondent shall exercise due care at the Properties with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Properties, and may require closure of its operations on the Properties or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Properties and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Properties that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all necessary and appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

27(a). By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of its elected officials, officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Properties and to its qualification for this Agreement. As Phase II site investigation reports are completed, City will provide them to the EPA.

27(b). The Settling Respondent may be liable under CERCLA due to its ownership of the Honeywell International facility located on East Air Lane, Phoenix, Arizona as described in City Leases numbered 2190 and 3293. Aside from any liability that Settling Respondent may have incurred by reason of its ownership of the aforementioned Honeywell International facility, Settling Respondent certifies that, to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

28. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. As to each of the Properties covered by this Agreement, this covenant not to sue takes effect on the date the Settling Defendant acquires such Property. However, in the event that the City of Phoenix does not acquire any one of the Properties within eighteen (18) months of the effective date of this Agreement, this covenant not to sue does not apply to that Property. The Parties acknowledge and agree that this covenant has no effect on any liability Settling Respondent may have as a result of ownership of a portion of the Site as described in paragraphs 19 and 27 of this Agreement.

IX. RESERVATION OF RIGHTS

29(a). The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V

(Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);

(2) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(3) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(4) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(5) criminal liability;

(6) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;

(7) liability for violations of local, State or federal law or regulations; and

(8) liability arising from Settling Defendant's ownership of a portion of the Site as described in paragraphs 19 and 27.

29(b). Notwithstanding the covenant not to sue set forth in Section VIII above or any other provision of this Agreement, the United States reserves its rights to respond to contamination, whether Existing Contamination or other contamination, at, or from the Properties whenever response may be necessary to protect human health or the environment. Such response may include, but is not limited to, requiring if and as necessary that the owner(s) of the Properties, whether Settling Respondent or its successors or assigns, implement the following Institutional Controls that EPA determines are necessary for achieving protection of human health, welfare, or the environment.

(1) Securing the Properties to prevent public access by means including, but not limited to, fencing and/or the use of security personnel;

(2) Deed restrictions to prevent or restrict use of groundwater underlying the Properties.

(3) Deed restrictions to prevent use of the Properties other than for aviation-related purposes.

30. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

31. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

32. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site or the Properties. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing Properties where response actions may be required.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

33. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Properties or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Properties, or any claims arising out of response activities at the Properties, including claims based on

EPA's oversight of such activities or approval of plans for such activities.

Nothing in this paragraph shall be construed to impair any claims that the Settling Respondent could assert pursuant to 42 U.S.C. §9623 for qualified costs.

34. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

35. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding on the Settling Respondent, its elected officials, officers, directors, employees, and agents. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section VIII shall apply to Settling Respondent's elected officials, officers, directors, or employees, to the extent that the alleged liability of the elected official, officer, director, or employee is based on its status and in its capacity as an elected official, officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

36. No transferee of all or a portion of any of the Properties shall have any right under this Agreement (except to the extent that paragraph 38 applies), including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), unless:

(a) at least thirty (30) days before the transfer, the transferee shall have submitted to EPA an affidavit which identifies the transferee and the property to be transferred, describes the proposed transfer, and certifies that:

(1) the transferee has not caused or contributed to the release or threat of release of any amount of the Existing Contamination;

(2) the transferee's use of the property will not result in a release or threat of release of any hazardous substance;

(3) the transferee's use of the property will not cause or contribute to the migration or release of any Existing Contamination or any threat to human health or the environment caused by any such release or threat of release; and

(4) the person signing the affidavit is fully authorized to make the foregoing certifications and to legally bind the transferee;

(b) EPA has consented in writing to the transfer of the rights, benefits and obligations conferred under the Agreement to the person taking possession of all or a portion of any of the Properties. EPA will provide Settling Respondent with its determination within thirty (30) days of receipt of Settling Respondent's affidavit. Any failure by EPA to render a decision within thirty (30) days shall be construed as a denial; and

(c) Prior to or simultaneous with the transfer of all or a portion of any of the Properties, the transferee shall consent in writing to be bound by and perform, from the date of transfer, all of the terms and obligations of the Agreement as though it were Settling Respondent. These terms and obligations include, but are not limited to, those set forth in Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section VII (Certification), Section IX (Reservation of Rights), Section X (Settling Respondent's Covenant Not to Sue), Section XI (Transfer of Covenant), Section XII (Disclaimer), Section XIII (Document Retention), Section XIV (Payment of Costs), Section XV (Notices), Section XVIII (Contribution Protection) of this Agreement.

If at any time, EPA determines that the transferee's affidavit is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the transferee, and the United States reserves all rights it may have against the transferee.

37. If all conditions of paragraph 36 have been met, upon transfer of ownership of any of the Properties:

(a) Settling Respondent shall be released from the obligations set forth in paragraphs 23 and 25 (except for the first sentence of paragraph 25) (Access/Notice to Successors in Interest) of this Agreement; and

(b) EPA shall be released from its obligations to Settling Respondent (but not to transferee) under paragraph 23 of this Agreement.

This provision does not apply to any lease of any of the Properties. Settling Respondent shall not be released from any other obligations set forth in this Agreement, except as EPA and Settling Respondent agree otherwise and modify this Agreement in writing.

38. Any lessee or sublessee (collectively "lessee") on any of the Properties may obtain the rights and benefits established by this Agreement, including any right under Section VIII (United States' Covenant Not to Sue) or Section XVIII (Contribution Protection), by providing to EPA, prior to the date of tenancy, the written certification set forth in Exhibit 8. However, if at any time EPA determines that the lessee's certification is not materially accurate or complete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to the lessee, and the United States reserves all rights it may have against the lessee. Any lessee that is unable to provide the written certification set forth in Exhibit 8 may obtain the rights and benefits of this Agreement only by complying with the transfer requirements of paragraph 36. Whenever a lessee who has obtained the rights and benefits of this Agreement pursuant to this paragraph or paragraph 36 vacates any of the Properties, Settling Respondent shall provide EPA written notice of the vacancy within thirty (30) days of the date upon which the lessee vacates.

39. Settling Respondent agrees to pay the reasonable costs, including attorneys' fees, incurred by EPA to review any subsequent requests for consent to assign or transfer the rights, benefits and obligations hereunder.

XII. DISCLAIMER

40. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor

constitutes any representation by EPA that the Properties or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

41. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Properties, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

42. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) of this Agreement, it shall be liable for all litigation and other enforcement costs incurred under CERCLA by the United States to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

43. All notices to Settling Respondents should be sent to:

Cynthia Parker
Environmental Coordinator
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport
3400 Sky Harbor Boulevard
Phoenix, Arizona 85034

With a copy to:

David Krietor
Aviation Director
City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport
3400 Sky Harbor Boulevard
Phoenix, Arizona 85034

And:

Craig J. Reece
Assistant City Attorney

City of Phoenix Law Department
200 West Washington, Suite 1300
Phoenix, Arizona 85003-1611

All notices to the United States should be sent to:

Allyn L. Stern
Office of Regional Counsel
U.S. EPA
75 Hawthorne Street (ORC-3)
San Francisco, California 94105

with a copy to:

Nadia Hollan
Superfund Remedial Project Manager
U.S. EPA
75 Hawthorne Street (SFD-8-2)
San Francisco, California 94105

Any party may change the name or address to which it receives notices by delivering written notice to the parties named herein.

XVI. EFFECTIVE DATE

44. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received. If Settling Respondent does not acquire all of the Properties covered by this Agreement within eighteen (18) months of the effective date, this Agreement is not effective as to any unacquired property.

XVII. TERMINATION

45. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

46. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are Settling Respondent's liability arising from its ownership of the Properties, and all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

47. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

48. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on Settling Respondent.

XIX. EXHIBITS

49. Exhibits 1-6 shall mean the Title Reports describing each of the Properties that are the subject of this Agreement.

50. Exhibit 7 shall mean the map depicting the Site.

51. Exhibit 8 shall mean the form certification letter, "Lessee's Certification of Compliance with Agreement and Covenant Not To Sue".

XXI. PUBLIC COMMENT

52. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

53. The Parties acknowledge Arizona Revised Statutes Annotated Section 38-511.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

BY:

Keith Takata
Superfund Division Director

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

W. Benjamin Fisherow
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

6/2/01

IT IS SO AGREED:

CITY OF PHOENIX, a municipal corporation

FRANK A. FAIRBANKS, City Manager

BY:

DAVID KRIETOR
Aviation Director

Date

5/4/01

ATTEST:

BY:

Vicky Miel
City Clerk

APPROVED AS TO FORM:

BY:

ACTING

City Attorney

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

BY:

Keith Takata
Keith Takata
Superfund Division Director

6-13-01
Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Walker Smith
Walker Smith
Principal Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

IT IS SO AGREED:

CITY OF PHOENIX, a municipal corporation

FRANK A. FAIRBANKS, City Manager

BY: David Krietor
DAVID KRIETOR
Aviation Director

3/4/01
Date

ATTEST:

BY: Ticky Miel
City Clerk

APPROVED AS TO FORM:

BY: Patricia Cole
ACTING City Attorney

PRH Revised 4/11/01
MHODMA.civildb;114489;1

RECEIVED
MAR 14 2001
U.S. DEPT. OF JUSTICE
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

EXHIBIT 1

I.C.P 400, L.L.C. / THOMAS AND JACQUELINE DONAHUE

Property Owner Name	I.C.P. 400 L.L.C., and Thomas E. Donahue and Jacqueline M. Donahue
Property Owner Mailing Address	6909 E. Main Street Scottsdale, AZ 85251
Property Tenant	Velocity Express (formerly Corporate Express)
Property Address	149 S. 27 TH St.
Property Parcel Numbers	121-61-007N (previously 007H) and 007K
Legal Description	A portion of the Northwest quarter of section 11, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian in Maricopa County, Book 121, Maps 61
Current Land Use	A two-story, office/warehouse building totaling 78,963 s.f. occupied by an on-demand delivery company . Velocity Express utilizes the 7.3 acre site for an office, temporary storage, staging and delivery of dry goods & documents and for employee parking.
Appraised Value (prepared by an independent, MAI certified appraiser)	Up-Date of Valuation: June 7, 2000 "As-Is" Market Valuation: \$4,330,000

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
REAL ESTATE DIVISION
TITLE REPORT**

COSTCENTER: see page two

Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT: AVIATION	PARCEL NO.
10-33	see page two	(see page two)	

FOR LEGAL DESCRIPTION, SEE ATTACHED COPY OF:

PARCEL NO. 1.; PARCEL NO. 2.; PARCEL NO. 3.; PARCEL NO. 4.; PARCEL NO. 5.; PARCEL NO. 6: of Document No. 99-0064793; together with the minerals and mineral ores reserved in Docket 2127, page 330, Docket 3104, page 66 and in Docket 3104, page 69.

REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX:

1. Warranty Deed from ICP 400, L.L.C., an Arizona limited liability company, which acquired title as I.C.P. 400, L.L.C., an Arizona limited liability company, as to an undivided 95.2% interest and Thomas E. Donahue and Jacqueline M. Donahue, husband and wife, as to an undivided 4.8% interest, as owner by Special Warranty Deed dated January 22, 1999, recorded January 22, 1999, in Document No. 99-0064793.
2. Quit Claim Deed from UNION PACIFIC RAILROAD, successor to SOUTHERN PACIFIC TRANSPORTATION COMPANY, for minerals and mineral ores reserved in those indentures recorded in Docket 2127, page 330, Docket 3104, page 66 and in Docket 3104, page 69.
3. Quit Claim Deed from ALLIEDSIGNAL INC., a Delaware corporation, formerly known as Allied-Signal Aerospace Company, successor-in-interest to The Garrett Corporation, as Lessee in unrecorded Lease dated November 1, 1995, as revealed in Collateral Assignment of Lessor's Interest in Lease dated January 21, 1999, recorded January 22, 1999, in Document No. 99-0064797 and as revealed in Non-Disturbance, Attornment and Subordination Agreement dated January 7, 1999, recorded January 22, 1999, in Document No. 99-0064798.
4. Quit Claim Deed from Corporate Express Delivery Systems Intermountain Inc., a Delaware corporation, as Lessee in unrecorded Lease dated November 25, 1997, as revealed in Collateral Assignment of Lessor's Interest in Leases, dated January 21, 1999, recorded January 22, 1999, in Document No. 99-0064797.
5. Continued on page two

Appropriate instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section.

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1. Reservations in Patent recorded September 22, 1885, in Book 12 of Deeds, page 62. (covers PARCEL NO. 1, 2, 3, 4, 5 and 6)
2. Easement for public utility purposes to the City of Phoenix recorded in Docket 2127, page 19. (covers part of PARCEL NO. 4)
3. Reserving the exclusive right to all of the minerals and mineral ores upon, within of underlying said land, together with the exclusive and perpetual right of ingress and egress beneath the surface to explore for, extract, mine and remove, including lateral or slant drilling, boring, digging or sinking of wells, shafts or tunnels as reserved in Docket 2127, page 330. (covers PARCEL NO. 4 and part of PARCEL NO. 5)
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ADDRESSES:

1. I.C.P. 400, L.L.C. and Thomas E. and Jacqueline M. Donahue - 6909 East Main Street, Scottsdale, AZ 85251.
2. UNION PACIFIC RAILROAD - 1255 South Campbell, Tucson, AZ 85713.
3. ALLIEDSIGNAL INC. - 101 Columbia Road, Morristown, NJ 07962-1057.
4. Corporate Express Delivery Systems Intermountain Inc. - 149 South 27th Street, Phoenix, AZ 85034.
5. Continued on page three.

REMARKS:

1. Taxes searched through October 15, 1999
2. Possibility of hazardous materials disclosed by the prior ownership of a portion of the property by ALLISON STEEL MFG. COMPANY, as evidenced by that Warranty Deed recorded in Docket 749, page 546.
3. Possibility of hazardous materials as disclosed by the unrecorded Lease to ALLIEDSIGNAL INC., recorded in Document Numbers 99-0064797 and 99-0064798.
4. Lease rejected by ORDERS recorded in Doc. #'s 85-129290 & 85-571483.

EFFECTIVE DATE: April 25, 2001
PREPARED BY: Ray Tyler

COST CENTER, continued:

AV01000088-L, AV01000090-L and AV01000091-L

COUNTY ASSESSOR'S NO.: continued:

121-61-004, 007G, 007K, 007N, 007P, 507 and 508

LOCATION, continued:

2739 East Washington Street, 2653 East Washington Street, 202 South 27th Street and 149 South 27th Street

REQUIREMENTS, continued:

5. Release and Reconveyance from CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee and NATIONAL BANK OF ARIZONA, a national banking association, as Beneficiary in that Deed of Trust executed January 21, 1999, by ICP 400, L.L.C., an Arizona limited liability company and THOMAS E. DONAHUE and JACQUELINE DONAHUE, husband and wife, as Trustor, recorded January 22, 1999, in Document No. 99-0064794. (\$4,250,000.00) as Partially Released and Partially Reconveyed in Deed of Partial Release and Partial Reconveyance as to PARCEL NO. 2 and PARCEL NO. 6, dated September 29, 1999, recorded October 8, 1999 in Document No. 1999-934297.
6. Release from National Bank of Arizona, a national banking association, as Secured Party in ARIZONA UNIFORM COMMERCIAL CODE FINANCING STATEMENT executed January 21, 1999, by Thomas E. Donahue and Jacqueline M. Donahue, husband and wife, as Debtor, recorded January 22, 1999, in Document No. 99-0064795.
7. Release from National Bank of Arizona, a national banking association, as Secured Party in ARIZONA UNIFORM COMMERCIAL CODE FINANCING STATEMENT executed January 21, 1999, by ICP 400, L.L.C., an Arizona limited liability company, as Debtor, recorded January 22, 1999, in Document No. 99-0064796.
8. Release and Reconveyance from: Investors Bancor, a California corporation, as Trustee and Fremont Investment & Loan, a California industrial loan association, as Beneficiary in Deed of Trust and Fixture Filing executed October 6, 1999 by ICP 400, L.L.C., an Arizona limited liability company, and Thomas E. Donahue and Jacqueline M. Donahue, husband and wife, as Trustor, recorded October 8, 1999 in Document No. 1999-934298, as additionally secured by Assignment of Rents and Leases dated October 6, 1999, recorded October 8, 1999 in Document No. 1999-934299 and Nondisturbance and Attornment Agreement dated October 6, 1999, recorded October 8, 1999 in Document No. 1999-943300. (Affects PART NO. 2 and PART NO. 6)

SUBJECT TO, continued:

4. Reserving the exclusive right to all minerals and mineral ores upon, within or underlying said land together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove, including lateral or slant drilling, boring, digging or sinking of wells, shafts or tunnels as reserved in Docket 3104, pages 66 and 69. (covers PARCEL NO. 1, 2, 3, 6 and a portion of PARCEL NO. 5)
5. Utility Easement to APS for electric lines recorded in Document No. 85-496248. (covers a portion of PARCEL NO. 2)
6. Utility Easement to APS for electric lines recorded in Document No. 85-557114. (covers a portion of PARCEL NO. 1)
7. Easement for public utility purposes to the City of Phoenix recorded in Document No. 86-193530. (covers a portion of PARCEL NO. 1)
8. Easement for public utility purposes retained by the City of Phoenix in RESOLUTION NO. 16828, recorded in Document No. 86-279077. (covers a portion PARCEL NO. 5)
9. Utility Easement to APS for electric lines recorded in Document No. 88-396728. (covers a portion of PARCEL NO. 1)
10. Utility Easement to APS for underground electric lines recorded in Document No. 95-0370455. (covers PARCEL NO. 4 and a portion of PARCEL NO. 5)
11. Taxes for the year 1999, first half now due and payable.
12. Declaration of Parking Rights and Access recorded in Document No. 1999-889743A.

ADDRESSES, continued:

5. CHICAGO TITLE - 2415 East Camelback Road, Suite 300, Phoenix, AZ 85016.
6. NATIONAL BANK OF ARIZONA - 4040 East Camelback Road, Phoenix, AZ 85018.
7. Investors Bancor - c/o Fremont Investment & Loan - 175 North Riverside Drive Anaheim, CA. 92808 Attn: Commercial Real Estate Department
8. Fremont Investment & Loan - 175 North Riverside Drive Anaheim, CA. 92808 Attn: Commercial Real Estate Department

EXHIBIT 2

I.C.P 400, L.L.C. / THOMAS AND JACQUELINE DONAHUE

Property Owner Name	I.C.P. 400 L.L.C., and Thomas E. Donahue and Jacqueline M. Donahue
Property Owner Mailing Address	6909 E. Main Street Scottsdale, AZ 85251
Property Tenant	Honeywell (formerly Allied Signal, Inc.)
Property Address	202 S. 27 TH St.
Property Parcel Numbers	121-61-004
Legal Description	A portion of the Northwest quarter section 11, Township 1 North, Range 3 East, Gila and Salt River Baseline and Meridian, Maricopa County, Book 121, Maps 61
Current Land Use	Honeywell (formerly Allied Signal) utilizes 4.7 acres and occupies a single story, 94,503 s.f. office, warehouse/manufacturing building for the rebuilding/cleaning/ reconditioning of turbine engines.
Appraised Value (prepared by an independent, MAI certified appraiser)	Up-Date of Valuation: July 5, 2000 "As-Is" Market Valuation: \$4,255,000

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
REAL ESTATE DIVISION
TITLE REPORT**

COSTCENTER: see page two

Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT: AVIATION	PARCEL NO.
10-33	see page two	(see page two)	

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EFFECTIVE DATE: April 25, 2001
PREPARED BY: Ray Tyler

COST CENTER, continued:

AV01000088-L, AV01000090-L and AV01000091-L

COUNTY ASSESSOR'S NO., continued:

121-61-004, 007G, 007K, 007N, 007P, 507 and 508

LOCATION, continued:

2739 East Washington Street, 2653 East Washington Street, 202 South 27th Street and 149 South 27th Street

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SUBJECT TO, continued:

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EXHIBIT 3

I.C.P 400, L.L.C. / THOMAS AND JACQUELINE DONAHUE

Property Owner Name	I.C.P. 400 L.L.C., and Thomas E. Donahue and Jacqueline M. Donahue
Property Owner Mailing Address	6909 E. Main Street Scottsdale, AZ 85251
Property Tenant	Arizona Department of Transportation
Property Address	2739 E. Washington St.
Property Parcel Numbers	121-61-007G and 7P
Legal Description	A portion of the East half of the NW quarter of Section 11, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona
Current Land Use	The Motor Vehicle Division of the Department of Transportation occupies this site for offices for their 250 employees and a training facility. The site consists of three acres with a two-story, office building totaling 81,815 s.f. and a parking lot for employees and the public.
Appraised Value (prepared by an independent MAI certified appraiser)	Up-Date of Valuation: August 8, 2000 "As-Is" Market Valuation: \$6,575,000

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
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TITLE REPORT**

COSTCENTER: see page two

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EFFECTIVE DATE: April 25, 2001
PREPARED BY: Ray Tyler

COST CENTER, continued:

AV01000088-L, AV01000090-L and AV01000091-L

COUNTY ASSESSOR'S NO.: continued:

121-61-004, 007G, 007K, 007N, 007P, 507 and 508

LOCATION, continued:

2739 East Washington Street, 2653 East Washington Street, 202 South 27th Street and 149 South 27th Street

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SUBJECT TO, continued:

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EXHIBIT 4

LAUNDRY & CLEANERS SUPPLY, INC.

Property Owner Name	Laundry & Cleaners Supply, Inc.
Property Owner Mailing Address	402 S. 50 th St. Phoenix, AZ 85034
Property Tenant	Avant Industries
Property Address	4120 E. Madison St.
Property Parcel Number	124-07-069-1, 070-2, 071-0, 072-7
Legal Description	Lots 33, 34, 35 and 36 Block 6, PORTLAND TRACT in Maricopa County, Book 11 of Maps at page 33
Current Land Use	Avant Industries occupies a 9,000 s.f. building on a 1/3 of an acre for mixing and packaging various waterbed cleaning and conditioning products.
Appraised Value (prepared by an independent, MAI certified appraiser)	Date of Valuation: May 19, 1999 "As-Is" Market Valuation: \$340,000

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
REAL ESTATE DIVISION
TITLE REPORT**

COSTCENTER: AV01000084-L

Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT:	PARCEL NO.
10-37	124-07-070✓	4120 East Madison Street	

LEGAL DESCRIPTION:

Lots 33, 34, 35 and 36, Block 6, PORTLAND TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 11 of Maps, page 33.

REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX:

1. Warranty Deed from LAUNDRY & CLEANERS SUPPLY, INC., an Arizona corporation, also known as Laundry and Cleaners Supply, Inc., an Arizona corporation, also known as Laundry & Cleaners Supply, Inc., as owner by Warranty Deed dated May 14, 1982, recorded June 16, 1982, in Docket 16092, page 193.
2. Release and Reconveyance from WELLS FARGO BANK, N.A., a national banking association, successor by merger to First Interstate Bank of Arizona, N.A., a national banking association, as Trustee and as Beneficiary in that Deed of Trust executed July 1988, by Laundry and Cleaners Supply, Inc., an Arizona corporation, as Trustor, recorded July 14, 1988, in Document No. 88-344111. (\$147,000.00)
3. Release and Reconveyance from ATI Title Agency of Arizona, Inc., an Arizona corporation, formerly known as United Title Agency of Arizona, an Arizona corporation, as Trustee and Douglas Eckenrode and spouse if married on August 2, 1991, as Beneficiary in that Deed of Trust executed August 2, 1991, by Laundry & Cleaners Supply, Inc., as Trustor, recorded August 20, 1991, in Document No. 91-389035. (\$110,000.00)
4. Release and Reconveyance from ATI Title Agency of Arizona, Inc., an Arizona corporation, formerly known as United Title Agency of Arizona, an Arizona corporation, as Trustee and Mary E. Eckenrode and spouse if married on August 2, 1991, as Beneficiary in that Deed of Trust executed August 2, 1991, by Laundry & Cleaners Supply, Inc., as Trustor, recorded August 20, 1991, in Document No. 91-389036. (\$110,000.00)

Appropriate instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section.

SUBJECT TO:

1. Reservations in Patent November 7, 1891, in Book 28 of Deeds, page 119.
2. Declaration of Restrictions recorded February 25, 1948, in Docket 154, page 464.
3. Change in Street Names recorded July 2, 1956, in Docket 1937, page 448.
4. Property taxes for the second half of 2000 are due and payable but not yet delinquent.

ADDRESSES:

1. LAUNDRY & CLEANERS SUPPLY, INC. - 4120 East Madison Street, Phoenix, AZ 85034.
2. WELLS FARGO BANK, N.A. - 100 West Washington Street, Phoenix, AZ 85003.
3. ATI Title - 3030 North Central Avenue, Phoenix, AZ 85013.
4. Douglas Eckenrode - P. O. Box 1, Chandler, AZ 85224.
5. Mary E. Eckenrode - P. O. Box 1, Chandler, AZ 85224.

REMARKS:

1. Taxes searched through April 13, 2001.
2. Possibility of hazardous materials first disclosed by the deed to LAUNDRY & CLEANERS SUPPLY, INC., recorded in Docket 16092, page 193.

EFFECTIVE DATE: April 25, 2001
PREPARED BY: Ray Tyler

EXHIBIT 5

RELIANCE STEEL & ALUMINUM COMPANY

Property Owner Name	Reliance Steel & Aluminum Co., a California corporation
Property Owner Mailing Address	301 S. 26 th Street Phoenix, AZ 85034
Property Tenant	N/A
Property Address	301 S. 26 th Street, 2532, 2538 and 2540 E. Jackson Street
Property Parcel Number	121-61-003; 121-62-090, 092, 094
Legal Description	<p>Main Complex Site: That part of the East half of the NW quarter of Section 11, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County described as follows: (The City of Phoenix file has the full page legal description and will be provided upon request)</p> <p>Storage Yard Area: Lots 2,4 and 6, Block 5, CRESTWOOD according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 29 of Maps at page 24.</p>
Current Land Use	A 5.5 acre site, consisting of a 106,784 s.f. industrial complex. The main complex area is used as a steel wholesaler facility handling carbon steel cut to size and delivered to fabricators. This main complex area consists of a general office/tool and supply warehouse, a metals manufacturing warehouse and a storage warehouse. The property includes loading dock facilities for trucks and has access to a rail spur. In addition, there is a storage yard located northwest of the main complex. This storage yard is located along 2532, 2538 and 2540 E. Jackson Street.
Appraised Value prepared by an independent MAI certified appraiser	<p>Date of Valuation: October 28, 1999</p> <p>"As-Is" Market Valuation: \$3,500,000</p>

CITY OF PHOENIX, ARIZONA REAL ESTATE DIVISION TITLE REPORT				COSTCENTER: AV01000105-L
REPORT FOR: PURCHASE				
Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT: AVIATION	PARCEL NO.	
10-33	121-61-003	301 South 26th Street		
FOR LEGAL DESCRIPTION, SEE ATTACHED COPY OF: Document No. 1985-353440.				
REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX:				
1. Warranty Deed from: Reliance Steel & Aluminum Co., a California corporation, as Owner by Corporation Grant Deed dated July 25, 1985, recorded July 30, 1985 in Document No. 1985-353440.				
2. Partial Release and Partial Reconveyance from: _____, successor to Chicago Title Company, an Arizona corporation, as Trustee and Ducommun Incorporated, a Delaware corporation, as Beneficiary in Deed of Trust and Assignment of Rents executed October 30, 1981 by Ducommun Metals Company, a Delaware corporation, as Trustor, recorded December 1, 1981 in Docket 15673, page 239, as amended by Modification Agreement dated February 24, 1984, recorded February 27, 1984 in Document No. 1984-78699, in the Original amount of \$24,000,000.00. (Covers more.)				
3. Release and Reconveyance from: _____, successor to Chicago Title Agency of Arizona, Inc., an Arizona corporation, as Trustee, and General Electric Credit Corporation, a New York corporation, as Beneficiary in Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents executed November 16, 1983 by Ducommun Metals Company, a Delaware corporation, as Trustor, recorded November 17, 1983 in Document No. 1983-464249, as amended by Amendment Agreement dated June 14, 1984, recorded July 17, 1984 in Document No. 1984-310079.				
Appropriate instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section.				
SUBJECT TO:				
1. Reservation contained in United States of America Patent recorded in Book 12 of Deeds, page 62.				
2. Reservation of the title and exclusive to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom, including without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with rights of ingress and egress for mining purposes, as contained in Indenture recorded in Docket 2262, page 245.				
3. Utility Easement for electric lines and facilities to Arizona Public Service Company recorded in Document No. 1986-100517.				
4. Taxes for the year 1999, first half now due and payable. (\$69,761 04)				
ADDRESSES:				
1. Reliance Steel & Aluminum Co. - c/o Tube Service Co. - 2550 East 25 th Street Los Angeles, CA. 90058				
2. Ducommun Incorporated - 612 South Flower Street, Suite 460 Los Angeles, CA. 90017				
3. General Electric Credit Corporation - 2777 Summer Street, 7 th Floor Stamford, CT. 06905				
REMARKS:				
1. Taxes searched through April 6, 2001				
EFFECTIVE DATE: April 19, 2001 PREPARED BY: Ray Tyler				

CITY OF PHOENIX, ARIZONA REAL ESTATE DIVISION TITLE REPORT			
REPORT FOR: PURCHASE		COSTCENTER: AV01000105-L	
Q.S. NO. 10-32	COUNTY ASSESSOR'S NO. 121-62-090, 092 and 094	PROJECT: AVIATION 2532 ,2538, and 2540 East Jackson Street	PARCEL NO.
LEGAL DESCRIPTION: Lots 2, 4, and 6, Block 5, CRESTWOOD, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 29 of Maps, page 24.			
REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX: 1. Warranty Deed from: Reliance Steel & Aluminum Co., a California corporation, by Warranty Deed dated March 29, 1993, recorded April 2, 1993 in Document No. 1993-199212.			
Appropriate Instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section			
SUBJECT TO: 1. Reservation contained in United States of America Patent recorded in Book 12 of Deeds, page 62. 2. Restrictions contained in Warranty Deed recorded in Book 407 of Miscellaneous, page 141. 3. Quit-Claim Deed for all the roads, streets, alleys and avenues in CRESTWOOD, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 29 of Maps, page 24, to Maricopa County recorded in Docket 176, page 416. 4. Effect of Conveyance of Irrigation Ditch Rights only to City of Phoenix, recorded in Docket 12197, page 727. 5. Taxes for the year 1999, first half now due and payable. (\$407.36)			
ADDRESSES: 1. Reliance Steel and Aluminum Co. – c/o Tube Service Co. – 2550 East 25 th Street Los Angeles, CA. 90058			
REMARKS: 1. Taxes searched through April 6, 2001			
EFFECTIVE DATE: April 19, 2001 PREPARED BY: Ray Tyler			

**REPORT FOR:
PURCHASE****CITY OF PHOENIX, ARIZONA
REAL ESTATE DIVISION
TITLE REPORT**

COSTCENTER: AV01000105-L

Q.S. NO.	COUNTY ASSESSOR'S NO.	PROJECT: AVIATION	PARCEL NO.
10-32	121-62-090, 092 and 094	50 South 24th Street	

LEGAL DESCRIPTION:

Lots 2, 4, and 6, Block 5, CRESTWOOD, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 29 of Maps, page 24.

REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX:

1. Warranty Deed from: Reliance Steel & Aluminum Co., a California corporation, by Warranty Deed dated March 29, 1993, recorded April 2, 1993 in Document No. 1993-199212.

LOT UPDATED
SAME PROPERTY AS:
2532, 2538 & 2540 E. JACKSON
E. LEWIS

Appropriate instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section

SUBJECT TO:

1. Reservation contained in United States of America Patent recorded in Book 12 of Deeds, page 62.
2. Restrictions contained in Warranty Deed recorded in Book 407 of Miscellaneous, page 141.
3. Quit-Claim Deed for all the roads, streets, alleys and avenues in CRESTWOOD, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 29 of Maps, page 24, to Maricopa County recorded in Docket 176, page 416.
4. Effect of Conveyance of Irrigation Ditch Rights only to City of Phoenix, recorded in Docket 12197, page 727.
5. Taxes for the year 1999, first half now due and payable. (\$407.36)

ADDRESSES:

1. Reliance Steel and Aluminum Co. - c/o Tube Service Co. - 2550 East 25th Street Los Angeles, CA. 90058

REMARKS:

1. Taxes searched through September 10, 1999.

EFFECTIVE DATE: September 29, 1999
PREPARED BY: M. Earl Lewis, Jr.

EXHIBIT 6

28TH STREET AND WASHINGTON, L.P. (formerly VICTORIA PROPERTIES MANAGEMENT, LLC.)

Property Owner Name	28 th Street and Washington, L.P. (formerly Victoria Properties Management, LLC)
Property Owner Mailing Address	549 S. 48 th St., Suite 108 Tempe, AZ 85281
Property Tenant	Contec, LLC (vacated November 17, 1999)
Property Address	215 S. 28 TH St. Phoenix, AZ
Property Parcel Number	121-60-019
Legal Description	That part of the West half of the Northeast quarter of Section 11, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.
Current Land Use	The property is vacant and improved. Contec utilized the 20,266 s.f. industrial building on 1.1 acres to service and repair facility for cable television converter units.
Appraised Value (prepared by an independent, MAI certified appraiser)	Date of Valuation: January 6, 1999 "As-Is" Market Valuation: \$850,000

CITY OF PHOENIX, ARIZONA REAL ESTATE DIVISION TITLE REPORT			
REPORT FOR: PURCHASE		COSTCENTER: AV01000085-L	
Q.S. NO. 10-34	COUNTY ASSESSOR'S NO. 121-60-019	PROJECT: 215 South 28th Street	PARCEL NO.
FOR LEGAL DESCRIPTION, SEE ATTACHED COPY OF: Document No. 2000-88433			
REQUIREMENTS FOR VESTING TITLE IN THE CITY OF PHOENIX: <ol style="list-style-type: none">1. Warranty Deed from: 28th Street & Washington Limited Partnership, an Arizona limited partnership, as Owner by Special Warranty Deed dated April 7, 1999, recorded April 30 1999 in Document No. 1999-416080A.2. Release and Reconveyance from: First American Title Insurance Company, a California corporation, as Trustee and Donald R. Ottosen, as Trustee of the Ottosen Trust Agreement dated May 11, 1987, as Beneficiary in that Deed of Trust executed June 1, 1999, by 28th Street & Washington Limited Partnership, an Arizona limited partnership, as Tristor, recorded June 3, 1999, in Document No. 1999-535470, in the original amount of \$785,000.00			
Appropriate Instruments from any parties holding unrecorded interests in the property as may be discovered by the negotiator and reported to Title Section.			
SUBJECT TO: <ol style="list-style-type: none">1. Reservations in Patent recorded August 1, 1890, in Book 113 of Deeds, page 539.2. Order of Immediate Possession Case No. CV99-22960 recorded February 2, 2000 in Document No. 2000-88433.3. Reserving forever, the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom including without limiting the generality of the foregoing, all petroleum, oil, natural gas and hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove the same, and to make such use of the said land beneath the surface as is necessary or useful in connection therewith, which use may include lateral or slant drilling, boring, digging or sinking of wells, shafts or tunnels; provided, however, that Grantor, its successors and assigns, shall not use the surface of said land in the exercise of any of said rights as reserved in Docket 2339, page 529 and in			
Continued on page three:			
ADDRESSES: <ol style="list-style-type: none">1. 28th Street & Washington Limited Partnership - 549 South 48th Street, Suite 108 Tempe, AZ. 852812. TRANSNATION TITLE INSURANCE COMPANY - 234 North Central Avenue, Suite 670, Phoenix, AZ 85004.3. Donald R. Ottosen, as Trustee - 105 South 28th Street, Phoenix, AZ 85034.4. First American Title Insurance Company - P. O. Box 3915 Phoenix, AZ. 85030			
Continued on page three:			
REMARKS: <ol style="list-style-type: none">1. Taxes searched through April 13, 2001			
EFFECTIVE DATE: April 25, 2001 PREPARED BY: Ray Tyler			

SUBJECT TO, continued:

- Docket 2385, page 421.
4. Public Utility Easement granted to The City of Phoenix by Indenture recorded March 11, 1958, in Docket 2422, page 486.
 5. Easement for electric line recorded in Docket 2487, page 294.
 6. The effect of spur tract service as disclosed in that AGREEMENT AND LEASE recorded in Docket 2539, page 174.
 7. The effect of the Easement recorded in Docket 2556, page 321.
 8. Easement for public utility purposes over the westerly 3.0 feet of Parcel 121-6-0017 as disclosed in Docket 5390, page 242.
 9. Reserving forever, the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land below a depth of 500 feet or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon, said land within 500 feet of the surface thereof, to extricate or remove the same as reserved in Dockets 5390, page 242 and 8074, page 211.
 10. Utility Easement to APS recorded June 20, 1986, in Document No. 86-310975.
 11. Utility Easement to APS recorded May 22, 1986, in Document No. 86-253118.
 12. The effect of that Memorandum of Easement recorded in Document No. 91-277136.
 13. Taxes for the second half of 1999, a lien now payable. (\$32,130.21)
 14. Reciprocal Encroachment Easement recorded June 3, 1999 in Document No. 99-535469.
 15. Water Right Deed recorded October 17, 1904, in Book 75 of Deeds, page 107.
 16. Notice of Lis Pendens Case No. CV99-22960 recorded December 27, 1999 in Document No. 99-1151845.

ADDRESSES, continued:

5. DONALD F. WATSON, Attorney at Law - 5001 East Main Street, Mesa, AZ 85205.
6. TRANSNATION TITLE INSURANCE COMPANY - 234 North Central Avenue, Suite 670, Phoenix, AZ 85004.
7. Donald R. Ottosen, as Trustee - 105 South 28th Street, Phoenix, AZ 85034.
8. First American Title Insurance Company - P. O. Box 3915 Phoenix, AZ. 85030

EXHIBIT 7

MOTOROLA 52nd STREET SUPERFUND SITE

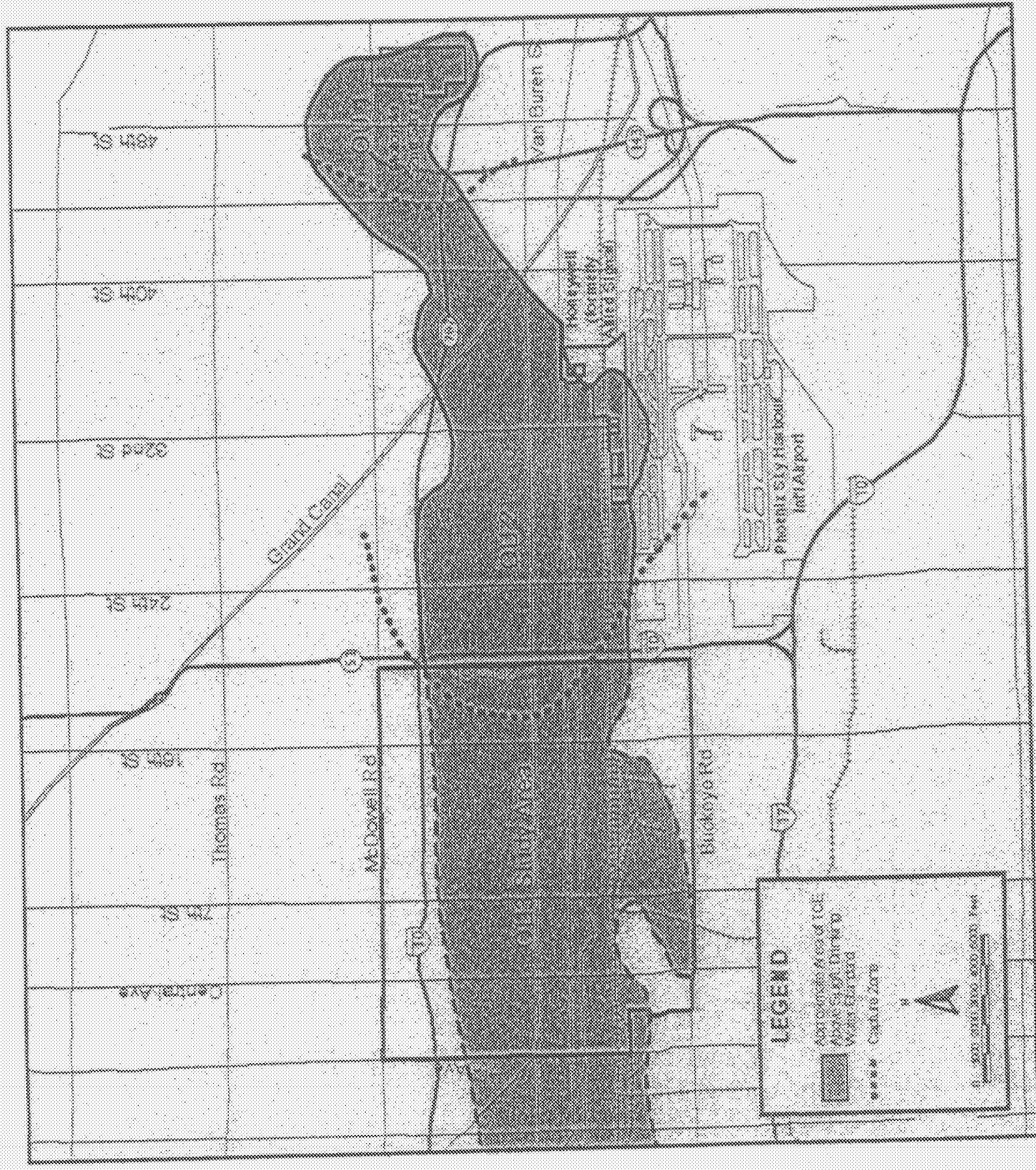


EXHIBIT 8

Exhibit 8

**LESSEE'S CERTIFICATION OF COMPLIANCE
WITH AGREEMENT AND COVENANT NOT TO SUE**

CERTIFIED MAIL
Allyn L. Stern
Senior Counsel (ORC-3)
U.S. EPA
75 Hawthorne Street
San Francisco, California 94105

Re: Lessee's Certification of Compliance with Agreement and
Covenant Not to Sue, Docket No.
Operable Unit Two, Motorola 52nd Street Superfund Site

In accordance with paragraph 38 of the Agreement and
Covenant Not to Sue, Docket No. ("Agreement"), the undersigned
party ("Lessee") hereby notifies the U.S. Environmental
Protection Agency ("EPA") that it intends to lease all or a
portion of real property that is the subject of the Agreement.
The Agreement was originally entered into by and between EPA and
the City of Phoenix and concerns the real property located at
[Identify address/property description of real property] (the
"Property").

[Insert a paragraph which identifies: (1) the parties to the
lease; (2) a description of the portion of the Properties to be
leased; and (3) the effective date and term of the lease.]

Lessee acknowledges that it has reviewed the Agreement and
any modifications and notices thereto. Pursuant to paragraph 38
of Section XI of the Agreement (Parties Bound/Transfer of
Covenant), Lessee hereby agrees and certifies that:

(1) Lessee has not caused or contributed to the release or
threat of release of any amount of the Existing
Contamination;

(2) Lessee will not, over the course of any 12 month period,
generate, use or store any hazardous substance or extremely
hazardous substance, as defined in 42 U.S.C. §§ 9601(14), in
an amount equal to or exceeding its reportable quantity as
established by 42 U.S.C. §§ 9602(a), at the Property;

(3) Lessee will not use the Property in any manner that
could cause or contribute to the migration or release of any
Existing Contamination;

- (4) Lessee will permit access to the Property as set forth in paragraph 23 of the Agreement;
- (5) Lessee will exercise due care at the Site and cooperate with EPA as set forth in paragraph 27 of the Agreement; and
- (6) Lessee will not interfere with response actions taken on or around the Property;
- (7) Lessee will be bound by and subject to the terms of the Agreement, and will act consistent with the terms of the Agreement.

Upon submission of this letter to EPA, Lessee shall have the rights and benefits set forth in Sections VIII (United States' Covenant Not to Sue) and XVII (Contribution Protection) of the Agreement with respect to the leased portion of the Property. However, if at any time EPA determines that Lessee's certification is materially inaccurate or incomplete, the Covenant Not to Sue and Contribution Protection shall be null and void with respect to Lessee, and the United States reserves all rights it may have against Lessee.

Notices and submissions required under the Agreement that affect Lessee's interest in the Property shall be sent to the following contact persons for Lessee:

[Insert Contact Information]

So Acknowledged and Agreed:

Name and Title

Name of Business

Date